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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2010-548**

12 **FRANCES CARNEY, A.K.A. FRANCES**
13 **CARNEY SCUDDER, A.K.A. FRANCES**
14 **ANN CARNEY**
135 Westfield Court #1714
Clarksville, TN 37040

ACCUSATION

15 **Registered Nurse License No. 359812**
16 **Nurse Midwife Certificate No. 684**
17 **Nurse Midwife Furnisher Certificate No.**
18 **684**
19 **Nurse Practitioner Certificate No. 9483**
20 **Nurse Practitioner Furnisher Certificate No.**
21 **9483**

Respondent.

22 Complainant alleges:

PARTIES

23 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
24 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
25 of Consumer Affairs.

26 2. On or about April 30, 1983, the Board of Registered Nursing issued Registered Nurse
27 License Number 359812 to Frances Carney, a.k.a. Frances Carney Scudder, a.k.a. Frances Ann
28

1 Carney (Respondent). The Registered Nurse License expired on March 31, 2009, and has not
2 been renewed.

3 3. On or about March 16, 1988, the Board of Registered Nursing issued Nurse Midwife
4 Certificate Number 684 to Respondent. The Nurse Midwife Certificate expired on March 31,
5 2009, and has not been renewed.

6 4. On or about November 2, 1993, the Board of Registered Nursing issued Nurse
7 Midwife Furnisher Certificate Number 684 to Respondent. The Nurse Midwife Furnisher
8 Certificate expired on March 31, 2009, and has not been renewed.

9 5. On or about October 21, 1997, the Board of Registered Nursing issued Nurse
10 Practitioner Certificate Number 9483 to Respondent. The Nurse Practitioner Certificate expired
11 on March 31, 2009, and has not been renewed.

12 6. On or about March 16, 1999, the Board of Registered Nursing issued Nurse
13 Practitioner Furnisher Certificate Number 9483 to Respondent. The Nurse Practitioner Furnisher
14 Certificate expired on March 31, 2009, and has not been renewed.

15 JURISDICTION

16 7. This Accusation is brought before the Board of Registered Nursing (Board),
17 Department of Consumer Affairs, under the authority of the following laws. All section
18 references are to the Business and Professions Code unless otherwise indicated.

19 8. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
20 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
21 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
22 Nursing Practice Act.

23 9. Section 2761 of the Code states:

24 "The board may take disciplinary action against a certified or licensed nurse or deny an
25 application for a certificate or license for any of the following:

26 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

27 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
28 functions.

1 ..."

2 10. California Code of Regulations, title 16, section 1442, states:

3 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
4 the standard of care which, under similar circumstances, would have ordinarily been exercised by
5 a competent registered nurse. Such an extreme departure means the repeated failure to provide
6 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
7 situation which the nurse knew, or should have known, could have jeopardized the client's health
8 or life."

9 11. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
10 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
11 licensee or to render a decision imposing discipline on the license.

12 12. Section 118, subdivision (b), of the Code provides that the expiration of a license
13 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
14 within which the license may be renewed, restored, reissued or reinstated.

15 13. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an
16 expired license at any time within eight years after the expiration.

17 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licensee found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21
22 **FACTUAL BACKGROUND**

23 15. At all relevant times, Respondent was employed as a nurse midwife at Kaiser
24 Permanente Santa Rosa in Santa Rosa, California. On or about November 7, 2005, at 04:30, 21
25 year-old Patient M.N.¹ was admitted to Kaiser Permanente Santa Rosa in labor with her first
26 child.

27 ¹ The patient's initials are used herein to protect her privacy. The patient's name and
28 identifying information will be released pursuant to a discovery request.

1 16. M.N.'s membranes were artificially ruptured at 09:15 and clear fluid was noted. At
2 13:45, a prolonged fetal heart rate deceleration occurred² and a fetal scalp electrode was applied³.
3 Labor progressed and as of 14:10, the patient was completely dilated and began pushing. At
4 14:45 minimal fetal heart rate variability⁴ with decelerations were noted. At 15:15, Respondent
5 assumed care of M.N.

6 17. At 16:23, after over two hours of pushing, the baby was on the perineum.
7 Respondent removed the fetal scalp electrode, and the fetal heart tones were auscultated
8 intermittently. The baby's head remained on the perineum for 17 minutes before delivery. The
9 baby was limp and apneic (not breathing) at birth. He sustained a profound birth injury due to
10 oxygen deprivation, and will require round the clock care for the rest of his life.

11 CAUSE FOR DISCIPLINE

12 (GROSS NEGLIGENCE)

13 18. Respondent is subject to disciplinary action under section 2761(a) in that she was
14 grossly negligent when she failed to constantly monitor the fetal heart rate when the baby's head
15 was on the perineum, given decelerations and minimal fetal heart rate variability.

16 19. Respondent is further subject to disciplinary action under section 2761(a) in that she
17 was grossly negligent when she failed to expedite delivery by an episiotomy given that the baby
18 was on the perineum for 17 minutes, with intermittent monitoring of the fetal heart rate and a
19 history of decelerations and decreased variability.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Registered Nursing issue a decision:

23 ² Decelerations of the fetal heart rate can be visualized on the electronic fetal heart rate
24 tracing. They can be a normal result of uterine contractions, or they can suggest fetal distress,
which can ultimately lead to fetal injury or demise.

25 ³ Typically, a fetus's heart rate is monitored by an external monitor placed on the mother's
26 abdomen. A fetal scalp electrode is attached directly to the fetus's scalp. It is used when the fetal
27 heart rate cannot be picked up by an external monitor or when the heart rate evidences fetal
distress that warrants closer observation.

28 ⁴ Fetal heart rate variability is one indicator of a healthy fetus.

1 1. Revoking or suspending Registered Nurse License Number 359812, issued to Frances
2 Carney, a.k.a. Frances Carney Scudder, a.k.a. Frances Ann Carney.

3 2. Revoking or suspending Nurse Midwife Certificate Number 684, issued to Frances
4 Carney, a.k.a. Frances Carney Scudder, a.k.a. Frances Ann Carney.

5 3. Revoking or suspending Nurse Midwife Furnisher Certificate Number 684, issued to
6 Frances Carney, a.k.a. Frances Carney Scudder, a.k.a. Frances Ann Carney.

7 4. Revoking or suspending Nurse Practitioner Certificate Number 9483, issued to
8 Frances Carney, a.k.a. Frances Carney Scudder, a.k.a. Frances Ann Carney.

9 5. Revoking or suspending Nurse Practitioner Furnisher Certificate Number 9483,
10 issued to Frances Carney, a.k.a. Frances Carney Scudder, a.k.a. Frances Ann Carney.

11 6. Ordering Frances Carney, a.k.a. Frances Carney Scudder, a.k.a. Frances Ann Carney
12 to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement
13 of this case, pursuant to Business and Professions Code section 125.3;

14 7. Taking such other and further action as deemed necessary and proper.

15 DATED: _____

16 4/23/10

17 Louise R. Bailey
18 LOUISE R. BAILEY, M.ED., RN
19 Interim Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant

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